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500.43230X00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: YAMADA et al

Serial No.: 10/695,945

Filed: October 30, 2003

For: Electrophotographic Apparatus

Art Unit: 2852

Examiner: S. Brase

RESPONSE TO COMMUNICATION OF JUNE 22, 2005

Mail Stop: Response (No Fee)
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

July 20, 2005

Sir:

The following remarks are respectfully submitted in connection with the above-identified application, in response to the Communication dated June 22, 2005, and March 18, 2005.

The requirement for election of one of the alleged following patentably distinct species of the claimed invention identified by the Examiner as Species I - a shape and configuration of a developing means (figures 1, 6-11 and 14) and Species II - a shape and configuration of a toner regulatory blade (figures 12 and 13), is traversed, insofar as the requirement is understood, and reconsideration and withdraw of the requirement are respectfully requested.

At the outset, it is noted that the Examiner does not include Figs. 2 - 4 in either Species I and Species II, and applicants submit that at least Figs. 2 and 3 generally show the shape and configuration of a developing means and toner regulatory blade of Fig. 1. Looking to the "BRIEF DESCRIPTION OF THE

SEVERAL VIEWS OF THE DRAWINGS" at page 11, line 14, et. seq. of the specification it is indicated that Fig. 1 is a cross sectional view showing a whole constitution of a first embodiment..." (emphasis added) and Figs. 2 and 3 are cross sectional views of part of the first embodiment. Thus, applicants submit that at least Figs. 2 and 3 should be considered at least with Species I as encompassing Fig. 1.

Although the Examiner contends that currently no claims are generic, applicants submit that at least independent claims 1 and 6 of this application are generic claims in reciting features of a developing means and a toner regulatory blade as illustrated in Figs. 1, 2 and 3 of the drawings of this application. See MPEP §806.04(e) which provides that "Species are always the specifically different embodiment" and it is apparent that Figs. 1, 2 and 3 are illustrations of the "first embodiment". Since such claims have not been rejected, applicants submit that at least claims 1 and 6 are allowable and upon allowance of a generic claim, claims directed to additional species should necessarily be considered.

In view of the above, applicants in the response filed April 18, 2005, provisionally elected, with traverse, Species I including at least independent claims 1 and 6, which are generic claims, as well as dependent claims 2 - 5 and 13. Thus, the claims readable on the elected species of Species 1 include claims 1 - 6 and 13.

As is apparent from the communication dated June 22, 2005, the Examiner, rather than indicating the disposition of Figures 2 and 3, which is described as part of the embodiment of Fig. 1, and illustrates the claimed features of claims 2, 6 and 13, as being part of embodiment 1 of Fig. 1 and rather than disagreeing with applicants indicated readability of the claims on the disclosed and illustrated species and withdrawing the claims not considered to be readable by the Examiner, the Examiner has chosen to treat the reply of April 18, 2005 as being non-compliant without

indicating the disposition of Figs. 2 - 4 of the drawings of this application. Applicants consider the action by the Examiner to be improper.

However, in view of the issuance of the communication of June 22, 2005, in order to provide a complete response to the election requirement, which is considered to be improper for the reasons given above, and to which reasons the Examiner has not responded, applicants provisionally elect with traverse the Species identified by the Examiner as Species I, although applicants submit that the Examiner has not properly identified Species I, and submit that at least claim 1, which is a generic claim, and claims 3 - 5 are readable on the elected Species I, which has been elected with traverse.

For the foregoing reasons, applicants request withdrawal of the election requirement as set forth by the Examiner and favorable action on all claims.

In view of the election with traverse, applicants note that a petition is available, depending upon the later action by the action by the Examiner.

To the extent necessary, applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to the deposit account of Antonelli, Terry, Stout & Kraus, LLP, Deposit Account No. 01-2135 (Case: 500.43230X00), and please credit any excess fees to such deposit account.

Respectfully submitted,

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